

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	PR Docket No. 92-257
Concerning Maritime Communications	)	
	)	
Petition for Rule Making filed by	)	RM-9664
Regionet Wireless License, LLC	)	

Response to Filings by Mobex Dated October 15, 2002  
Ex Parte

Warren C. Havens ("Havens") and Telesaurus Holdings GB, LLC ("Telesaurus") (in which Havens holds majority controlling interest) (together, "LMS Wireless," their DBA ["LMSW"]) provides here a response to two filings made by Mobex on October 15, 2002 (the 10-15-02 Filings).

Both are entitled "Reply to Supplement to Opposition to Petition for Reconsideration," although LMSW only submitted one such Supplement. One of the 10-15-02 Filings appears to be a Reply to the 10-9-02 LMSW Supplement to Reply to Opposition to Petition for Reconsideration.

Both of the 10-15-02 Filings rest upon the Mobex erroneous assertion that the subject two LMSW filings should be dismissed or disregarded since they were not filed in compliance with §1.1206(b)(1) since they were not filed with the FCC Secretary. It is clear that, once again (as with basic station construction and other rules) Mobex misuses an FCC rule to provide something it does not. Such misuse is abuse of process. §1.1206(b)(1) provides, in its last

sentence, for electronic filing in the subject type of proceeding,<sup>1</sup> which is how the two LMSW filings were submitted.

In the two subject filings, LMSW gave the public-interest reasons that the filings should be reviewed and considered in a decision. Such reasons are as or more compelling than those in many Ex Parte filings duly considered by the Commission in various dockets including Ex Parte submissions by Mobex in this docket. Indeed, Mobex has made numerous Ex Parte presentations in the above-captioned docket considered and cited by the FCC. For example, see the Fifth Report and Order, FCC 02-74, footnotes 154, 213, 216, 217. And, e.g., in the current 800 MHz proceeding 02-55, the Commission is allowing numerous Ex Parte filings in order to obtain a more full and complete record. In this matter (the subject two LMSW Supplements), what is at stake is 1) future licensing in AMTS, whether by auction or spectrum set asides for Public Safety and Critical Infrastructure, and 2) whether to extend for incumbent valid licenses the service and interference contours, that is, how much spectrum is off limits for future licensing. These two matters are central to the future of AMTS and justify consideration of Ex Parte filings that provide a more full and complete record for a decision.

Regarding the 10-15-02 Filing that addressed the 10-7-02 LMSW Supplement to its Opposition to the Mobex Petition for Reconsideration, Mobex is clearly misconstruing the LMSW filing. The LMSW rationale was clearly given and relevant to the matter at hand. And if it was not relevant, Mobex would not have responded on one point by beginning to give an account of its alleged valid AMTS stations by asserting that when it did use LTR equipment it was “configured” in a certain way to allow for required communications. The information given

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<sup>1</sup> See the Third Further Notice of Proposed Rule Making in the above-captioned docket, FCC 00-370, ¶81.

is so vague as to be meaningless in terms of rule compliance, and it is at odds with published standards LMSW set forth, but at least Mobex is beginning to acknowledge that FCC rules require actual equipment and operation to certain standards. This process should be completed. If FCC rules regarding required station construction and required services are to mean anything, then the FCC has to apply them at some point, and this requires reporting sufficient to demonstrate compliance.

Regarding the 10-15-02 Filing that addressed the 10-9-02 LMSW Supplement to its Reply to the Mobex Opposition to the LMSW Petition for Reconsideration, the LMSW Supplement was fully relevant to the proceeding and to the Mobex Opposition. Contrary to this filing on page 2, LMSW did not mischaracterize Mobex's position regarding a lack of need for more spectrum by Public Safety entities: Mobex wrote on page 3 of its Opposition:

The Commission recently allocated some 50 MHz of spectrum for Public Safety which has not been put to any use. In a concurrent proceeding, the Commission is considering allocating more additional [sic] spectrum to Public Safety at 800 MHz than could be gained from reallocating the AMTS band.<sup>2</sup>

Mobex was clearly suggesting that if Public Safety could not "put to any use" 50 MHz of recently allocated spectrum, and may get more at 800 MHz, then it did not need more spectrum, AMTS or otherwise. The LMSW Supplement responded to this, and it specifically demonstrated the need by Public Safety for spectrum in the upper VHF range where AMTS lies and is thus

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<sup>2</sup> The quoted assertion was vague and misleading. It apparently refers to the 4.9 GHz allocation (4940-4990 MHz; WT docket 00-32). However, that is not a concluded proceeding and it is not decided yet how much of the allocation will be exclusive to traditional Public Safety (the Commission is considering extending eligibility to some utilities and other entities under 309(j)(2) of the Communication Act, and possibly to the commercial sector). Besides, that spectrum will not be used for wide area communications as would AMTS. Mobex simply does not comprehend or address the reports put out by the Public Safety community which LMSW cited (including in its Petition for Reconsideration) as to its need for more spectrum for wide

clearly relevant to the LMSW Petition for Reconsideration that proposed, and the Mobex Opposition that opposed, setting aside AMTS spectrum for Public Safety in lieu of auction, including spectrum that is not subject to valid licenses due to licensee failure to meet application, construction, renewal, or operational requirements.

Respectfully submitted,

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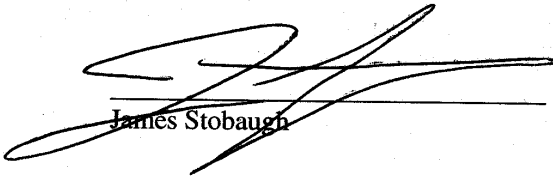
area communication. Mobex misconstrues such need and certain not-decided allocations in its attempt to oppose the rational, well-supported plan LMSW presented.

Certificate of Service

I, James Stobaugh, an employee of Warren Havens, certify that I have, on this 23<sup>rd</sup> day of October 2002, placed into the USPS mail system, with 1<sup>st</sup>-class postage, a copy of the foregoing Response to the following:

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